MAY 8 1957
JOHN T. FEY, Clerk

No. 979

In the

Supreme Court of the United States

OCTOBER TERM, 1956

INTERNATIONAL DERRICK AND EQUIPMENT COMPANY and its successor, DRESSER EQUIPMENT COMPANY,
Petitioner,

v.

R. L. CROIX AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION, Intervener,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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R. L. CROIX AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION, Intervener,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, International Derrick and Equipment Company and its successor, Dresser Equipment Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered February 13, 1957 (Petition for Rehearing in the said cause having been denied on March 13, 1957).

I.

REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 419-431), printed in Appendix A hereto, infra, page 15, is reported in 241 Federal 2d 216.

II.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Fifth Circuit was entered February 13, 1957 (R. 432; Appendix B, infra, page 29). Rehearing was denied on March 13, 1957 (R. 442; Appendix B, infra, page 30). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

III.

QUESTIONS PRESENTED

1. Whether a manufacturer is liable for a personal injury arising from a defect after a chattel has been in use for a period of seven (7) years.

2. Whether a manufacturer is liable for a personal injury arising out of the use of a chattel for which it was not designed and not reasonably foreseeable.

IV.

STATEMENT

This suit was originally instituted in the State Court of Ector County, Texas, by Respondent, R. L. Croix, claiming

damages for personal injuries due to an alleged defect in that portion of a derrick which he was in the process of erecting for Rumbaugh Rig Company when the gin pole leg collapsed on June 13, 1952. Due to the diversity of citizenship and the amount involved, the case was removed to the United States District Court for the Western District of Texas, Pecos Division. After pleading defensively that the use of the derrick over a seven (7) year period of time relieved the manufacturer of all liability and further that the use at the time of the accident was not a use for which it was designed or reasonably foreseeable, the evidence was submitted to the jury. Due to the complicated manner in which the derrick is erected and the accident occurred, the evidence produced by both sides showed that the accident occurred when a gin pole leg collapsed and struck the Respondent's arm. The derrick is a structure consisting of steel pieces which are erected to a point approximately one hundred thirty-six (136) feet from the ground. At that point a platform is erected on which the gin pole is constructed. The gin pole is a structure which consists of a house-type frame and is placed horizontally with the top portion of the housing having a U-bolt through it to bring into place the crown block. After the crown block is in place the gin pole performs no other usefulness as the crown block is then anchored between the side headers and the platform at the top of the derrick. At the time of the accident the gin pole was in the process of being erected and the only portion of the gin pole that had been erected was one (1) lone leg which was anchored solely at the bottom

welded to plate and bolted to the platform. This gin pole leg consists of a four (4) inch angle iron welded to a plate with a three-eighth (3/8) inch fillet weld on the inside of the angle where the angle iron is attached to the plate. This gin pole leg is approximately nine (9) feet long. There was a pulley inserted in one (1) side of the angle near the top of the angle iron between eight (8) and nine (9) feet from the base plate. Through this pulley a rope was inserted which ran at an angle to the opposite corner of the derrick floor where another pulley was located and out to a drum on an automobile. The other end of the rope was attached to two (2) side headers which weigh one hundred ninety-six (196) pounds each, or a total of three hundred ninety-two (392) pounds. The side headers were then pulled up through the center of the derrick with the gin pole leg acting as a crane for a pulley from the force being exerted by the winding of the rope on the drum on the automobile. Since the rope weighs approximately sixty (60) or sixty-five (65) pounds and you have as much force pulling up as you do down and without counting any friction there was exerted approximately one thousand (1,000) pounds of a diagonal pulling force on this single unsupported column in the air. There is also some testimony that the base upon which the plate was attached was "wiggly." When the load had reached almost to the top where the platform was located, the gin pole leg collapsed by breaking at the weld with the resulting injuries to the Respondent.

Defensively the evidence introduced by the Petitioner showed that the derrick and the gin pole leg in question was

originally sold by the Petitioner on December 13, 1945, to the Dominican Seaboard Oil Company, according to the stipulation of the parties (R. 294). Thereafter the gin pole leg and derrick was shipped to the Dominican Republic and used for the drilling of two (2) oil wells (R. 319, 320). The derrick was stacked and moved while in the Dominican Republic approximately ten (10) times and was exposed to salt water and salt air up until the time it was sold to Lucey Products Corporation in June of 1948 (R. 321). That the said derrick and gin pole leg were purchased in August of 1948 from Lucey Products Corporation by Trinity Drilling Company (R. 281, 282). Said derrick and gin pole leg were used by Trinity Drilling Company in the drilling of fourteen (14) wells which means that the gin pole leg and derrick was erected fourteen (14) times and dismantled fourteen (14) times (R. 282, 283). In addition thereto, said derrick was skidded some three (3) or four (4) times for the drilling of some three (3) or four (4) more wells (R. 283, 284). Respondent admitted on cross-examination that the gin pole leg and derrick that was erected was a used derrick (R. 120), and that the derrick pieces including the gin pole legs when they are dismantled are thrown in a basket and then thrown on the truck and receive pretty rough handling (R. 121). Respondent further admitted that the underneath portion of the angle iron was rusty at the point of collapse (R. 125). It was further testified by Petitioner's witness that the galvanizing process does not reach between the plate and the angle iron, thus exposing that area to rust (R. 312). The witnesses

who were asked concerning the strain thrown upon the derrick and the gin pole during the skidding operation testified that in skidding a derrick it threw a tremendous strain upon the derrick and gin pole (R. 283, 312, 313). Furthermore, the fact that the derrick was galvanized did not necessarily mean that it would not deteriorate due to exposure to salt water and other corrosive materials (R. 312, R. 336). It was also testified to that the steel derrick and gin pole legs, in particular, deteriorate with use and age (R. 336, 337). The person who had supervised the erecting and dismantling of the derrick in question testified that it was only natural for the various pieces to be bent (R. 317), and their being damaged by trucks running over the pieces of the derrick (R. 259). It was further testified that metal crystallizes and develops metal fatigue with heavy loads being placed upon it from time to time (R. 357).

Furthermore, the Petitioner to prove that the use at the time of the accident was not a use for which it was designed or could be reasonably foreseeable, introduced evidence from Mr. Eugene F. Shields, Assistant to the Executive Vice President of the Petitioner, who definitely stated that the gin pole leg was not designed or manufactured for such purpose (R. 297), and then in great detail explained from an engineering standpoint concerning the torsion, slenderness ratio and other engineering factors to prove that it was not so designed (R. 298-309). It was further testified that the derrick was assembled by the manufacturer and each weld was inspected by a separate department of in-

spectors (R. 325-326). It was also brought out that the derrick is designed according to the plans and specifications approved by the American Petroleum Institute and that the load limit upon each gin pole leg that the derrick was designed for in connection with its breaking point as far as the weld is concerned was three hundred (300) pounds (R. 303), and that at the time the accident occurred there was at least nine hundred twenty (920) pounds of pull upon the member at the place where the break occurred. It was also pointed out in the testimony by Mr. Shields that the Petitioner had been manufacturing derricks since 1921 and had manufactured between ten thousand (10,000) and fifteen thousand (15,000) derricks and there had been no claim made by anyone against the Petitioner prior to this on account of any gin pole leg failing in the manner in which it is alleged for which Respondent claimed injury (R. 313). Also the testimony of Mr. C. R. Athy who is National Chairman of the Manufacturers' Sub-Committee for derricks and masts of the American Petroleum Institute and has been chairman for twenty (20) years showed that the gin pole leg was not designed to be used as a crane or an arm for a hoist (R. 326, 327), and also explained in great detail from an engineering standpoint that the derrick was built to American Petroleum Institute's specifications and reiterated the testimony of Mr. Shields concerning the load limit that the specifications for each gin pole leg could withstand (R. 327-341). Furthermore, the witness, J. W. Hall testified that what the Respondent was doing at the time of the accident was not correct from an

engineering standpoint as it was "very much like loading a top of a flagpole" (R. 286). Furthermore, Petitioner also offered to prove that the use of the gin pole leg which was made at the time of the accident was not reasonably foreseeable in that insofar as the manufacturer had knowledge of, pieces of derrick were erected by means of an erector's gin pole which is a separate piece of equipment furnished by the rig builders and no piece of the derrick itself was designed to act as a hoist for raising other pieces of the derrick (R. 297-309, 326-341). Many of the witnesses testified that the use of the gin pole leg and the manner it was being used at the time of the accident was improper, unsafe, and not a customary use in good rig building practices (R. 270, 284, 285, 363, 368, 369).

After being charged by the Court, the jury returned a verdict in favor of the Respondent and against the Petitioner in the sum of Six Thousand Two Hundred Fifty Dollars ($6,250.00), and judgment was entered thereon. From the District Court's judgment Petitioner perfected its appeal to the Court of Civil Appeals for the Fifth Circuit, which Court affirmed the judgment of the Trial Court on the following basis:

1. Although recognizing the rule that a lapse of time relieves the manufacturer from liability, the Court entered upon a new theory of law dealing with moving parts and non-moving parts; and

2. The Court entirely disregarded all evidence upon the point that this was the first accident ever occur-

ring that the manufacturer had notice of and also disregarded all evidence that the gin pole leg was never designed to be used in such a manner according to American Petroleum Institute specifications and found that the use at the time of the accident was reasonably foreseeable by the manufacturer.

V.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is not in accord with the decisions heretofore rendered by other Courts of Appeals and is in conflict therewith.

The Court of Appeals recognized the rule that a lapse of time of seven (7) years might in some instances relieve the manufacturer of liability, but in this particular instance it draws the distinction between parts which are moving and parts which are not moving in order to establish liability against the Petitioner. This is the first time that such a distinction has been enunciated by any Court in English or American Jurisprudence and is in conflict with all previous decisions rendered by other Courts of Appeals. In this regard there are no specific decisions rendered by the Courts of Texas dealing with this problem except dictum in the case of *Southern Oil Company v. Church (Ct. of Civ. App.), 72 S. W. 797*, and no such distinction was made in that case.

Furthermore, the only evidence offered showed that no previous accident of a similar nature was ever reported

to the Petitioner after it had manufactured some ten to fifteen thousand derricks, and furthermore, said derrick was not designed or built to be used in the manner it was being used at the time the accident occurred.

The opinion of the Court of Appeals is in conflict with the following decisions of other Courts of Appeals: *Lynch v. International Harvester Company (10 Cir.), 60 F. 2d 223; Ford Motor Company v. Wolber (7 Cir.), 32 F. 2d 18; Schindley v. Allen-Sherman-Hoof Company (6 Cir.), 157 F. 2d 192; Borg-Warner Corporation v. Heine (6 Cir.), 128 F. 2d 657; Standard Conveyor Company v. Scott (8 Cir.), 221 F. 2d 460, Cert. Den. 76 S. Ct. 62, 350 U. S. 830; Hentschel v. Baby Bathinette Corporation (2 Cir.), 215 F. 2d 102, Cert. Den. 75 S. Ct. 663, 349 U. S. 923, 99 L. Ed. 1254; Pontifex v. Sears Roebuck & Company (4 Cir.), 226 F. 2d 9[illegible]; Purkey v. Sears Roebuck & Company (5 Cir.), 220 F. 2d 700.*

The decision of the Court of Appeals in this case being therefore in conflict with the above opinions creates a situation in which this Court has granted writs of certiorari. *Rules of the Supreme Court of the United States, Rule 19(1)(b); Reconstruction Finance Corp. v. Bankers Trust Co., 318 U. S. 163, 87 L. Ed. 680, 63 Sup. Ct. 515; Helvering v. Sabine Transp. Co., Inc., 318 U. S. 306, 87 L. Ed. 778, 63 Sup. Ct. 569; Helvering v. American Dental Co., 318 U. S. 332, 87 L. Ed. 785, 63 Sup. Ct. 577; Clearfield Trust Co. v. United States, 318 U. S. 363, 87 L. Ed. 838, 63 Sup. Ct. 573; Corn Exchange Nat. Bank & Trust Co. v. Klauder, 318 U. S. 434, 87 L. Ed. 500, 63 S. Ct. 679,*

144 A. L. R. 1189; Helvering v. Oregon Mut. Life Ins. Co., 311 U. S. 267, 85 L. Ed. 180, 61 Sup. Ct. 207; Brooks v. National Labor Relations Board, 348 U. S. 96, 99 L. Ed. 125, 75 Sup. Ct. 176; Bell v. United States, 349 U. S. 81, 99 L. Ed. 905, 75 Sup. Ct. 620; Squire v. Capoeman, 351 U. S. 1, 76 Sup. Ct. 611.

2. The questions here presented are of great importance and have far reaching effect.

Necessarily the rule imposing liability on a manufacturer for defects should have some limitation. The reason for this is that after the manufactured article leaves its hands or that of the distributor or retailer, it will necessarily fall into the hands of different persons with varied degrees of care, and who are not subject to control by the manufacturer. Certainly, accidents occurring from manufactured articles on their first use or within a short period of time after being purchased would logically impose liability upon a manufacturer and the Courts have so held. But for the Courts to hold the manufacturer liable after a thirdhanded product which has been continuously used for a seven (7) year period is a traversity upon justice and will open the gate for numerous claims of questionable character. It is imposing on the manufacturer an unreasonable obligation to be responsible for the care of its products beyond any reasonable period of time. It therefore would make the manufacturer almost an insurer of the care to be taken of products by third persons when it is common knowledge that all metals develop fatigue and chattels deteriorate with use. Actually, every manufacturer

in the United States is affected by this decision and it is a decision which has far-reaching effects. There should be some limitation to a manufacturer's liability and it should be the duty of this Court to definitely advise the manufacturing industry of its liability and how long it is going to be responsible for its product after it has been placed upon the market for use.

Furthermore, the product was designed according to the standards prescribed for the petroleum industry by the American Petroleum Institute and actually the cause of the accident was not a defective condition but the improper weight with a directional pull being exerted upon a lone unsupported beam standing in the air. It was designed to withstand three hundred (300) pounds and almost one thousand (1,000) pounds was being exerted on the weld at the time the accident occurred. Certainly there wasn't any evidence to the contrary but that it was not being used in a manner for which it was designated and the accident in question was not reasonably foreseeable. It would thus impose upon the manufacturer practically the duty of sending a man with each one of its derricks all over the world to see that the rig builders properly erected the derrick on each occasion that it was erected. This is an impossible and unreasonable burden to so impose.

3. The decision of the Court of Appeals was clearly erroneous.

The Court of Appeals while recognizing the rule that a lapse of time relieves a manufacturer attempted to draw

the fine distinction between moving and non-moving parts. This distinction has not been recognized in any previous decision and is in fact contrary to the decisions heretofore set forth.

Furthermore, is the distinction in law going to be whether the parts are movable, per se, or whether they are moved by other people? Thus, the Court will get into many, many fine distinctions ad infinitum until confusion can be the only result. Actually, the law should be more definite rather than more confusing.

The only evidence offered showed that the derrick had been in continuous use over a seven (7) year period drilling some nineteen to twenty wells and the only case cited to support the decision of the Court of Appeals concerned a coffee urn [*Reed and Barton v. Maas (1 Cir.), 73 F. 2d 359*], which coffee urn had been used only four (4) or five (5) times during a seven (7) year period. Certainly it is common knowledge that a coffee urn is manufactured to be used almost daily for the consumption of coffee, whereas it is also common knowledge that it takes as long as six months to drill a well in West Texas so that the comparison of the use in the coffee urn case and that of the use in this case of the product is ridiculous and has no relationship whatsoever.

The derrick was not designed or manufactured to be used in the manner in which it was being used at the time the accident occurred and no evidence whatsoever was

offered to the contrary. Therefore, for the foregoing reasons the decision of the Court of Appeals was clearly erroneous.

CONCLUSION

Accordingly, Petitioner prays that this Honorable Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Petitioner, International Derrick and Equipment Company and its successor, Dresser Equipment Company, served Respondent, R. L. Croix and Texas Employers' Insurance Association, Intervener, with three copies of the Petitioner's Petition for Certiorari in accordance with Rule 33, Subsections 1 and 3(b), by depositing copies of such Brief in the United States Post Office at Washington, D. C., air mail, postage pre-paid, addressed to Counsel of Record for Respondent, James T. Smith, First National Bank Building, Midland, Texas, and J. O. Bean, 1010 Gulf States Building, Dallas 1, Texas, sending three copies of such Brief to each of them on the ..... day of May, 1957, in accordance with Sections 1 and 3(b) of Rule 33 of the Revised Rules of the Supreme Court of the United States.

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